

**IN THE MATTER OF:  
Middlefield-Ellis-Whisman  
Superfund Site**

**UNDER THE AUTHORITY OF THE  
COMPREHENSIVE ENVIRONMENTAL  
RESPONSE, COMPENSATION, AND  
LIABILITY ACT OF 1980, 42 U.S.C.  
§ 9601, et seq., as amended.**

## I. INTRODUCTION

5. The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and

limitations contained in Sections VII, VIII, IX, and X, the potential liability of Settling Respondents for the Existing Contamination at the Property, which may otherwise result from Settling Respondents becoming the owners of the Property.

6. The Parties agree that Settling Respondents' entry into this Agreement, and the actions undertaken by Settling Respondents in accordance with this Agreement, do not constitute an admission of any liability by Settling Respondents.

7. The resolution of this potential liability, in exchange for provision by Settling Respondents to EPA of a substantial benefit, is in the public interest.

## II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

8. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

9. "Existing Contamination" shall mean:

- a. any hazardous substances, pollutants or contaminants, present or existing on or under the Property as of the effective date of this Agreement;
- b. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the effective date of this Agreement; and
- c. any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the effective date of this Agreement.

10. "Institutional Controls" shall mean the covenants, conditions, restrictions, and other equivalent requirements and controls authorized by EPA with respect to Existing Contamination for one or more of the following purposes: (1) to restrict the use of groundwater; (2) to limit human or animal exposure to Existing Contamination; (3) to ensure that there is no interference with the performance, operation, and maintenance of any selected response action; and (4) to ensure the integrity and effectiveness of any selected response action.

11. "Parties" shall mean the United States on behalf of the EPA, and Settling Respondents.

12. "Property" shall mean that portion of the Site, encompassing approximately 10 acres, which is described in Exhibit I-A of this Agreement.

13. "Settling Respondents" shall mean Jay Paul Company, Inc., a California Corporation, and Whisman Ventures.

14. "Site" shall mean the Middlefield-Ellis-Whisman ("MEW") Superfund Site, encompassing approximately 8 square miles of mostly industrial property located just south of the San Francisco Bay, in the City of Mountain View, California. The center of the Site is an industrial park bounded by Middlefield Road, Ellis Street and Whisman Road, which Site is depicted generally on the map attached as Exhibit 2. The Site includes the Property and all areas where hazardous substances and/or pollutants or contaminants have come to be located.

15. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

### **III. STATEMENT OF FACTS**

16. The Jay Paul Company, Inc. is a commercial real estate developer that is the buyer in a Sale Agreement for the Property located within the Site.

17. The Property is located in an area of mostly industrial property located in the center of the Site in an area bounded by Middlefield Road, Ellis Street and Whisman Road. The Property has not been used for commercial purposes for the past several years.

18. Settling Respondents intend to purchase and redevelop the Property for commercial, research and development, industrial and other uses, to encumber the Property with mortgages and deeds of trust securing loans to fund the purchase, construction, and development, and to lease and/or sell and otherwise use and enjoy the Property and return the Property to productive use. Settling Respondents intend to construct two office buildings on the Property, each approximately 80,000 square feet including two stories. No basements will be installed. The buildings will be utilized as office space with no manufacturing operations.

19. Settling Respondents are not, and have never been, named as a potentially responsible parties at the Site.

20. Settling Respondents have informed EPA that:

- a. The Property will be occupied by local high technology and other businesses, which will allow those industries to expand their businesses in Silicon Valley;
- b. Settling Respondents' use of the Property is expected to expand the local tax base and create jobs for the local community.

21. Settling Respondents represent, and for the purposes of this Agreement, EPA relies on those representations, that Settling Respondents' involvement with the Property have been limited to inspecting, auditing and performing environmental and other due diligence of the Property in connection with Settling Respondents' intended purchase of the Property.

#### **IV. .PAYMENT**

22. In consideration of and in exchange for the United States' Covenant Not to Sue in Section VIII herein, Settling Respondents agree to pay to EPA the sum of seventy-five thousand dollars (\$75,000), within 30 days of the date that this Agreement becomes final. This Agreement shall be considered final if and when, after the close of the public comment period specified in paragraph 53, EPA notifies Settling Respondents in writing that EPA has not withdrawn or modified its consent to the Agreement. Settling Respondents shall make the payment required by this Agreement in the form of a certified check made payable to "U.S. EPA Hazardous Substance Superfund," referencing EPA Region IX, EPA Docket Number 0-01, EPA Site Number 09-84, DOJ case number 90-11-2-244/1, and name and address of Settling Respondents. Payment shall be sent to:

U. S. EPA  
Region IX, Attn: Superfund Accounting  
P.O. Box 360863M  
Pittsburgh, PA 15251

Notice of payment (including a copy of the check and transmittal letter) shall be sent to those persons listed in Section XV (Notices and Submissions), and to:

Catherine Shen  
Financial Management Specialist (PMD-6)  
U.S. EPA Region IX  
75 Hawthorne Street  
San Francisco, California 94105

Section Chief  
Environmental Enforcement Section  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
Attn: DJ # 90-11-2-244/1 (Wise)

23. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

#### **V. ACCESS/NOTICE TO SUCCESSORS IN INTEREST**

24. Commencing upon the date that it acquires title to the Property, Settling Respondents agree to provide to EPA and its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Property for the purposes of performing and overseeing response actions at the Site or the Property under federal law. EPA agrees, to the extent practicable, to provide notice to the Settling Respondents of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as

amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901, ("RCRA") et seq., and any other applicable statute or regulation, including any amendments thereto.

25. With respect to the Property owned or controlled by the Settling Respondents that is located within the Site, within 15 days after the effective date of this Agreement. Settling Respondents shall submit to EPA for review and approval a notice to be filed with the Recorder's Office, Santa Clara County, State of California, which shall provide notice to all successors-in-title that the Property is part of the Site, and that potentially responsible parties are subject to an Administrative Order for Remedial Design and Remedial Action U.S. EPA Docket No. 91-4, or have entered into a Consent Decree requiring implementation of the remedy selected by the Record of Decision dated May 1989, as amended. Such notice shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of the case, and the date the Consent Decree was entered by the Court and the date and docket number of the Order. Settling Respondents shall record the notice within 10 days of EPA's approval of the notice. Settling Respondents shall provide EPA with a certified copy of the recorded notice within 10 days of recording such notice.

26. Settling Respondents shall ensure that assignees, successors in interest, lessees and sublessees of the Property shall provide the same access and cooperation that is required by this Agreement. Settling Respondents shall expressly require all such persons to abide by the access and cooperation terms hereof in any subsequent lease, assignment or other conveyance by Settling Respondents. Settling Respondents shall ensure that a copy of this Agreement is provided to any current lessee, sublessee, or other occupant on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, and Section XI (Parties Bound/Transfer of Covenant), of the Agreement.

## **VI. DUE CARE/COOPERATION**

27. Settling Respondents shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. Settling Respondents recognize that the implementation of response actions at the Site or the Property may interfere with Settling Respondents' use of the Property and may require closure of its operations or a part thereof. Settling Respondents agree to cooperate fully with EPA in the implementation of response actions at the Property and further agree not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with Settling Respondents' and its lessees' operations by such entry and response. In the event that Settling Respondents become aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment. Settling Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA of such release or threatened release.

## **VII. CERTIFICATION**

28. By entering into this Agreement, each Settling Respondent certifies that to the best of

its knowledge and belief, it has fully and accurately disclosed to EPA all information known to it and all information in the possession or control of its officers, directors, employees, contractors and agents that relates in any material way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Property and to its qualification for this Agreement. Each Settling Respondent also certifies that, to the best of its knowledge and belief, it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Property. If the United States determines that information provided by either or both of Settling Respondents is not materially accurate and complete, this Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

#### **VIII. UNITED STATES' COVENANT NOT TO SUE**

29. Subject to the Reservation of Rights in Section IX of this Agreement and subject to payment of the amount specified in Section IV (Payment) of this Agreement, the United States covenants not to sue or take any other civil or administrative action against Settling Respondents for any and all civil liability for injunctive relief or reimbursement of response or other costs, pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) with respect to the Existing Contamination.

#### **IX. RESERVATION OF RIGHTS**

30. The covenant not to sue set forth in Section VIII above does not pertain to any matters other than those expressly specified in Section VIII (United States' Covenant Not to Sue). The United States reserves and this Agreement is without prejudice to all rights against Settling Respondents with respect to all other matters, including but not limited to, the following:

- a. claims based on a failure by Settling Respondents to meet a requirement of this Agreement, including but not limited to Section IV (Payment), Section V (Access/Notice to Successors in Interest), Section VI (Due Care/Cooperation), and Section XIV (Payment of Costs);
- b. any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Property caused or contributed to by Settling Respondents, its successors, assignees, lessees or sublessees;
- c. any liability resulting from exacerbation by Settling Respondents, its successors, assignees, lessees or sublessees, of Existing Contamination;
- d. any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Property prior to the effective date of this Agreement, not within the definition of Existing Contamination;
- e. any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Property after the effective date of this Agreement, not within the definition of Existing Contamination;
- f. criminal liability;

- g. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA;
- h. liability for violations by Settling Respondents of local, State or federal law or regulations; and
- i. liability for Institutional Controls, as to Settling Respondents, that EPA determines are necessary for achieving protection of human health, welfare or the environment.

31. With respect to any claim or cause of action asserted by the United States, Settling Respondents shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

32. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.

33. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or the Property or to seek to compel parties other than the Settling Respondents to perform or pay for response actions at the Site or the Property. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority. Nothing in this Agreement shall limit the right of EPA to require the implementation of Institutional Controls. Settling Respondents acknowledge that the Property is in a location where response actions may be required.

#### **X. SETTLING RESPONDENTS' COVENANT NOT TO SUE**

34. In consideration of the United States' Covenant Not To Sue in Section VIII of this Agreement, Settling Respondents hereby covenant not to sue and not to assert any claims or causes of action against the United States, including any department, agency or instrumentality of the United States, its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106 (b) (2), 111, 112, 113, or any other provision of law; any claim under CERCLA Sections 107 or 113 related to the Site; any claim under the Fifth Amendment of the United States Constitution for "takings"; any claim under the Tucker Act, 28 U.S.C. § 1491, or at common law arising out of or relating to access to, land use restrictions, or response activities undertaken at the Site; or any other claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.

35. Settling Respondents reserve, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of plans or activities at the Property or the Site, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign

immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

## **XI. PARTIES BOUND/TRANSFER OF COVENANT**

36. This Agreement shall apply to and be binding upon the United States and shall apply to and be binding upon the Settling Respondents, its officers, directors, employees, successors, and assigns. The United States' Covenant Not to Sue in Section VIII and Contribution Protection in Section XVIII shall apply to Settling Respondents' officers, directors, employees, successors or assigns, but only to the extent that the alleged liability of the officer, director, employee, successor, or assign is based on its status and in its capacity as an officer, director, employee, successor or assign of Settling Respondents, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Respondents. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

37. Any lessee or sublessee (collectively "lessee") on the Property may obtain the rights and benefits established by this Agreement, including any right under Section VIII (United States' Covenant Not to Sue) or Section XVIII (Contribution Protection), by providing to EPA, prior to the date of lessee's tenancy, the written certification set forth in Exhibit 3. However, if at any time EPA determines that the lessee's certification is not materially accurate or complete, the Covenant Not to Sue and Contribution Protection shall be null and void with respect to such lessee, and the United States reserves all rights it may have against such lessee. Whenever a lessee who has obtained the rights and benefits of this Agreement pursuant to this paragraph vacates the Property, Settling Respondents shall provide EPA written notice of the vacancy within thirty (30) days of the date upon which the lessee vacates.

38. Except as provided in paragraph 37 as to lessees, no transferee of all or a portion of the Property shall have any right under this Agreement, including any right under Section VIII (United States' Covenant Not to Sue) or Section XVIII (Contribution Protection), unless:

- a. at least thirty (30) days before the transfer, the transferee shall have submitted to EPA an affidavit which identifies the transferee and the Property or portion of the Property to be transferred, describes the proposed transfer, and certifies that:
  - (1) the transferee has not caused or contributed to the release or threat of release of any amount of the Existing Contamination;
  - (2) the transferee's use of the Property will not result in a release or threat of release of any hazardous substance;
  - (3) the transferee's use of the Property will not cause or contribute to the migration or release of any Existing Contamination or any threat to human health or the environment caused by any such release or threat of release;
  - (4) the person signing the affidavit is fully authorized to make the foregoing



certifications and to legally bind the transferee;

- b. EPA has consented in writing to the transfer of the rights, benefits and obligations conferred under the Agreement to the transferee taking possession of all or a portion of the Property. EPA will provide Settling Respondents with its determination within thirty (30) days of receipt of the transferee's affidavit. Any failure by EPA to render a decision within thirty (30) days shall be construed as a denial; and
- c. Prior to or simultaneous with the transfer of all or a portion of the Property, the transferee shall consent in writing to be bound by and perform, from the date of transfer, all of the terms and obligations of the Agreement as though it were Settling Respondents. These terms and obligations include, but are not limited to, those set forth in Section V (Access/Notice to Successors in Interest), Section VI (Due Care/ Cooperation), Section VII (Certification), Section IX (Reservation of Rights), Section X (Settling Respondents' Covenant Not to Sue), Section XI (Transfer of Covenant.), Section XII (Disclaimer), Section XIII (Document Retention), Section XIV (Payment of Costs), Section XV (Notices and Submissions), Section XVIII (Contribution Protection) of this Agreement. If at any time, EPA determines that the transferee's affidavit is not materially accurate or complete, the Covenant Not to Sue and Contribution Protection shall be null and void with respect to the transferee, and the United States reserves all rights it may have against the transferee.

39. If all conditions of paragraph 38 have been met, upon transfer of ownership of all or portions of the Property (not including any lease) :

- a. Settling Respondents shall be released from the obligations set forth in paragraphs 24 and 26 (except for the first sentence of paragraph 26) (Access/Notice to Successors in Interest) of this Agreement; and
- b. Settling Respondents shall not be released from any other obligations set forth in this Agreement, except as EPA and Settling Respondents agree otherwise and modify this Agreement in writing.
- c. EPA shall be released from its obligations to Settling Respondents (but not to transferee) under paragraph 24 of this Agreement.

40. Settling Respondents agree to pay the reasonable costs, including attorneys' fees, incurred by EPA and the State of California to review any subsequent requests for consent to assign or transfer the rights, benefits and obligations hereunder.

## **XII. DISCLAIMER**

41. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by hazardous substances, contaminants, or pollutants at the Property or the Site nor constitutes any representation by EPA that the Property or

the Site is fit for any particular purpose.

### **XIII. DOCUMENT RETENTION**

42. Settling Respondents agree to retain and make available to EPA all business and operating records, contracts, site studies and investigations and documents relating to the presence, use, handling, storage, or disposal of hazardous substances, pollutants, or contaminants at the Property for at least ten years following the effective date of this Agreement, unless otherwise agreed to in writing by EPA and the Settling Respondents. At the end of ten years, the Settling Respondents shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

### **XIV. PAYMENT OF COSTS**

43. If Settling Respondents fail to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Payment) of this Agreement. Settling Respondents shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

### **XV. NOTICES AND SUBMISSIONS**

44. All notices to Settling Respondents should be sent to:

Jay Paul Company, Inc.  
353 Sacramento Street, Suite 1740  
San Francisco, California 94111  
Attn: Asset Manager / Jay Paul

with a copy to:

Jon L. Benjamin, Esq..  
LeBoeuf, Lamb, Greene & MacRae, L.L.P.  
One Embarcadero Center, Fourth Floor  
San Francisco, California 94111

All notices to the United States should be sent to:

Regional Counsel  
U.S. EPA  
75 Hawthorne Street  
San Francisco, California 94105

with a copy to:

Eugenia Chow  
Superfund Project Manager  
U.S. EPA  
75 Hawthorne Street  
San Francisco, California 94105

Any party may change the name or address to which it receives notices by delivering written notice to the parties named herein.

#### **XVI. EFFECTIVE DATE**

45. Settling Respondents may take possession or control of the Property, at its own risk, before EPA completes its review of the public comments pursuant to paragraph 53 of this Agreement, and/or before the Regional Administrator and the Assistant Attorney General consent to and execute this Agreement. If the Regional Administrator and the Assistant Attorney General execute this Agreement and EPA does not withdraw or modify its consent to this Agreement after reviewing public comments, then the effective date of this Agreement shall be the date upon which Settling Respondents took possession or control of the Property. If the Regional Administrator or the Assistant Attorney General does not execute this Agreement, or if EPA withdraws or modifies its consent to this Agreement after reviewing public comments, then there is no Agreement and no effective date.

#### **XVII. TERMINATION**

46. If any party believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of this Agreement, that party may request in writing that the other party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other party to terminate such provision(s). Such termination by agreement shall not terminate the other provisions of this Agreement, except as the Parties may otherwise expressly agree in writing.

#### **XVIII. CONTRIBUTION PROTECTION**

47. With regard to claims for contribution against Settling Respondents, the Parties hereto agree that Settling Respondents are entitled to protection from contribution actions or claims as provided by CERCLA Section 113 (f) (2), 42 U.S.C. § 9613 (f) (2) for matters addressed in this Agreement. The matters addressed in this Agreement are Settling Respondents' liability arising from its ownership of the Property, and all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person with respect to the Existing Contamination.

48. Settling Respondents agree that with respect to any suit or claim for contribution brought by Settling Respondents for matters related to this Agreement, it will notify the United States, in writing, no later than 60 days prior to the initiation of such suit or claim.

49. Settling Respondents also agree that with respect to any suit or claim for contribution brought against either or both of them for matters related to this Agreement, they will notify the United States, in writing, within 10 days of service of the complaint on Settling Respondents.

#### **XIX. EXHIBITS**

50. Exhibit 1 shall mean the description of the real property which is the subject of this Agreement.

51. Exhibit 2 shall mean the map depicting the Site.

52. Exhibit 3 shall mean the form certification letter, "Lessee's Certification of Compliance With Agreement And Covenant Not To Sue".

#### **XX. PUBLIC COMMENT**

53. This Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations that indicate that this Agreement is inappropriate, improper or inadequate.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION IX

BY:


Keith A. Takata  
Keith A. Takata  
Director, Superfund Division

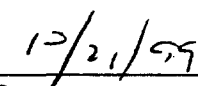
NOVEMBER 4, 1999  
Date

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:


  
\_\_\_\_\_  
Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources Division

  
\_\_\_\_\_  
Date

IT IS SO AGREED:

JAY PAUL COMPANY, INC.  
a California Corporation

BY:


  
\_\_\_\_\_  
Jay Paul  
President  
Jay Paul, Inc.

9/30/99  
Date

IT IS SO AGREED:

WHISMAN VENTURES

BY:

  
\_\_\_\_\_  
Jay Paul  
Managing Member  
Whisman Ventures

9/30/99  
Date



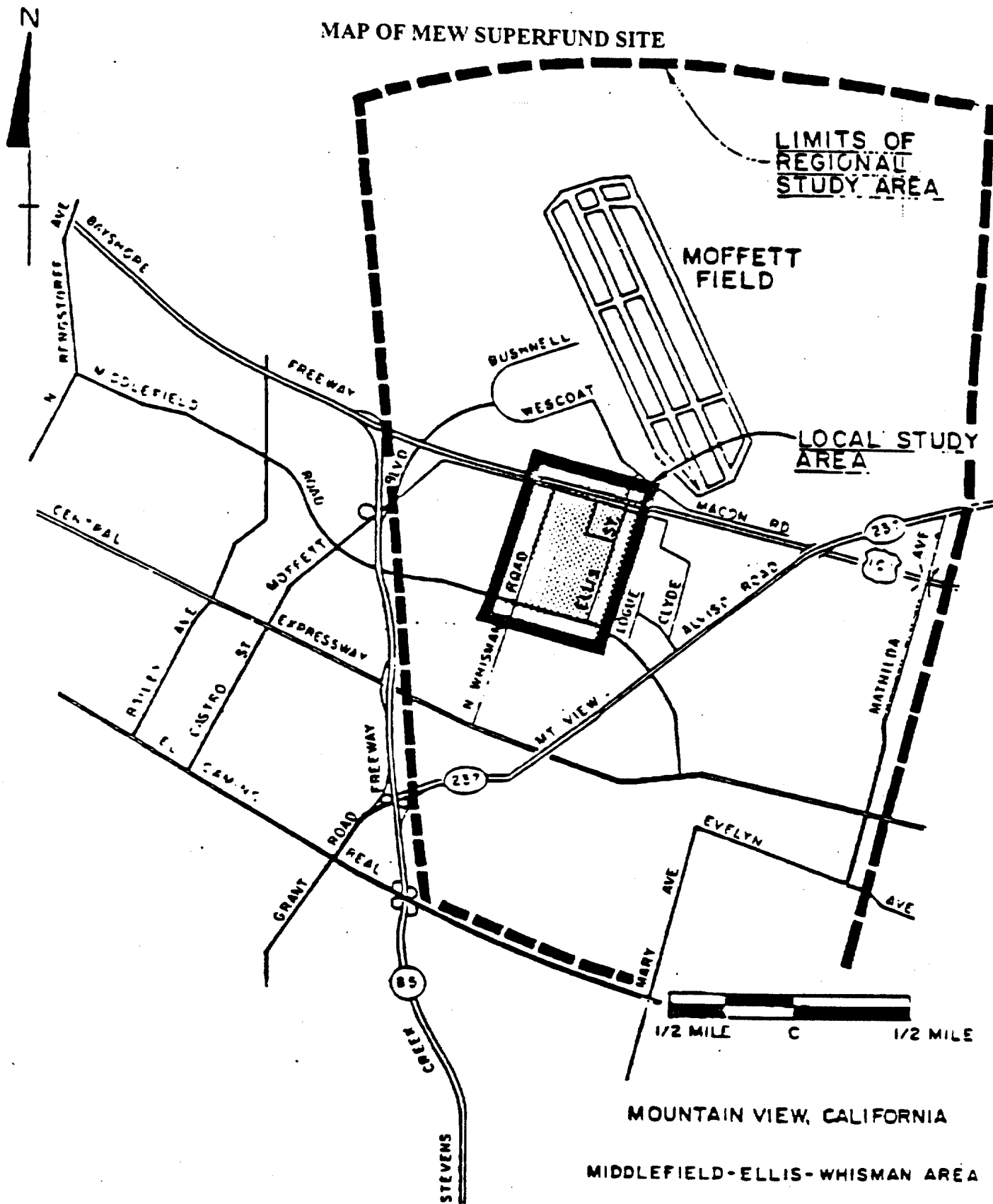
**Exhibit 1**  
**Legal Description of Property Located at 515-545 North Whisman Road,**  
**City of Mountain View, California**

All that certain Real Property in the City of Mountain View, County of Santa Clara, State of California, described as follows:

Lot 26, as shown on that certain Map entitled, "Tract No. 2724 Ellis-Middlefield Industrial Park," which Map was filed for Record in the Office of the Recorder of the County of Santa Clara, State of California, on June 16, 1960, in Book 121 of Maps, at Pages 40, 41, 42, 43 and 44.

Exhibit 2

MAP OF MEW SUPERFUND SITE



Site Location

Figure 1-1

**Exhibit 3**

**CERTIFICATION OF COMPLIANCE  
WITH AGREEMENT AND COVENANT NOT TO SUE**

**CERTIFIED MAIL**  
Regional Counsel  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, California 94105

**Re:     Certification of Compliance with Agreement and Covenant Not to Sue, Docket No. 0-01; MEW Superfund Site**

In accordance with paragraph 37 of the Agreement and Covenant Not to Sue, Docket No. 0-01 ("Agreement"), the undersigned party ("Signator") hereby notifies the U.S. Environmental Protection Agency ("EPA") that it intends to [acquire an interest in] [lease] all or a portion of the real property that is the subject of the Agreement. The Agreement was originally entered into by and between EPA and Jay Paul Company, Inc. and Whisman Ventures, and concerns the real property described in Exhibit 1 (the "Property").

[Insert a paragraph which identifies: (1) the parties to the lease or sublease; (2) a description of the portion of the Property which is the subject of the lease or sublease; and (3) the effective date and term of the lease or sublease.]

Signator acknowledges that it has reviewed the Agreement and any modifications and notices thereto. Pursuant to paragraph 38 of Section XI of the Agreement (Parties Bound/Transfer of Covenant), Signator hereby agrees and certifies that:

- a.     Signator has not caused or contributed to the release or threat of release of any amount of the Existing Contamination:
- b.     Signator will not, over the course of any 12 month period, generate, use or store, without the express written consent of EPA (such consent not to be unreasonably withheld), any hazardous substance or extremely hazardous substance, as defined in 42 U.S.C. §§ 9601(14), 11002(a), in an amount equal to or exceeding its reportable quantity as established by 42 U.S.C. §§ 9602(a), 11002(a), at the portion of the Property which is the subject of the lease or sublease;
- c.     Signator will not use the portion of the Property which is the subject of the lease or sublease in any manner that could cause or contribute to the migration or release of any Existing Contamination:
- d.     Signator will permit access to the portion of the Property which is the subject of the lease or sublease as set forth in paragraph 24 of the Agreement:
- e.     Signator will exercise due care at the Site and cooperate with EPA as set forth in

paragraph 27 of the Agreement;

- f. Signator will not interfere with response actions taken on or around the Property; and
- g. Signator will be bound by and subject to the terms of the Agreement, and will act consistent with the terms of the Agreement.

Upon submission of this letter to EPA, Signator shall have the rights and benefits set forth in Sections VIII (United States' Covenant Not to Sue) and XVII (Contribution Protection) of the Agreement with respect to the portion of the Property which is the subject of the lease or sublease. However, if at any time EPA determines that Signator's certification is materially inaccurate or incomplete, the Covenant Not to Sue and Contribution Protection shall be null and void with respect to Signator, and the United States reserves all rights it may have against Signator.

Notices and submissions required under this Agreement that affect Signator's interest in the Property shall be sent to the following contact persons for Signator:

[INSERT CONTACT INFORMATION]

So acknowledged and agreed:

\_\_\_\_\_  
\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Name of Business

\_\_\_\_\_  
Date